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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

S1 14 Cr. 483 (LAP)

5 ISRAEL REYES, ALFREDO SANCHEZ,
6 ALEXANDER MORILLO, JUAN
7 PIMENTEL, JOSMARIL RODRIGUEZ,
8 JEFFERY DUKES AND JOSE CRUZ,

Defendants.

9
10 New York, N.Y.
11 December 15, 2014
12 12:10 p.m.

13 Before:

14 HON. LORETTA A. PRESKA,

15 District Judge
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APPEARANCES

PREET BHARARA

United States Attorney for the
Southern District of New York

BRENDAN F. QUIGLEY

SHAWN CROWLEY

Assistant United States Attorneys

DANIEL DeMARIA

Attorney for Defendant Reyes

CARLOS GONZALEZ

Attorney for Defendant Sanchez

OLIVER STORCH

Attorney for Defendant Morillo

JEFFREY GRECO

ATTORNEY for Defendant Pimentel

CESAR DE CASTRO

Attorney for Defendant Rodriguez

MEGAN BENETT

Attorney for Defendant Dukes

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1 (Case called)

2 THE COURT: Is the government ready?

3 MR. QUIGLEY: The government is ready. Brendan
4 Quigley and Shawn Crowley for the government.

5 THE COURT: Good morning.

6 Is the defense ready? Counsel for Mr. Reyes?

7 MR. DeMARIA: Good morning, your Honor. We are ready,
8 Mr. Reyes is present.

9 THE COURT: Good morning, Mr. DeMaria.

10 Counsel for Defendant Sanchez?

11 MR. GONZALEZ: Good morning, your Honor. Carlos
12 Gonzalez for Mr. Sanchez. We are ready.

13 THE COURT: Thank you Mr. Gonzalez.

14 Counsel for Defendant Pimentel?

15 MR. GRECO: Jeffrey Greco, we are ready.

16 THE COURT: Counsel for Jeffrey Dukes.

17 MS. BENETT: Good morning, your Honor. Megan Benett
18 for Mr. Dukes.

19 THE COURT: Counsel for Defendant Morillo?

20 MR. STORCH: Good morning, your Honor. Oliver Storch,
21 and Mr. Morillo is present in the green shirt. Good morning,
22 your Honor.

23 THE COURT: Thank you. Good morning.

24 Counsel for Defendant Rodriguez?

25 MR. De CASTRO: Cesar De Castro for Ms. Rodriguez.

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1 Good morning.

2 THE COURT: Has Defendant Cruz appeared, counsel?

3 MR. QUIGLEY: No, your Honor. He is still waiting to
4 be writted in.

5 THE COURT: Thank you very much.

6 Counsel, do I understand that the first order of
7 business is to arraign the defendants on the superseder?

8 MR. QUIGLEY: Yes, your Honor.

9 THE COURT: May I ask defendants to rise, please?

10 MS. BENETT: Your Honor, sorry, if I may? Mr. Dukes
11 has already been arraigned on this indictment.

12 THE COURT: You may be seated, Mr. Dukes.

13 Ladies and gentlemen, have you received a copy of the
14 sealed superseding indictment S1 14 crim 483?

15 DEFENDANT REYES: Yes, your Honor.

16 DEFENDANT SANCHEZ: Yes, your Honor.

17 DEFENDANT MORILLO: Yes, your Honor.

18 DEFENDANT PIMENTEL: Yes, your Honor.

19 DEFENDANT RODRIGUEZ: Yes, your Honor.

20 THE COURT: Have you gone over it with your attorney?

21 DEFENDANT REYES: Yes, your Honor.

22 DEFENDANT SANCHEZ: Yes, your Honor.

23 DEFENDANT MORILLO: Yes, your Honor.

24 DEFENDANT PIMENTEL: Yes, your Honor.

25 DEFENDANT RODRIGUEZ: Yes, your Honor.

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1 THE COURT: Would you like me to read the whole thing
2 out loud here in court or is it sufficient that you have talked
3 with your attorneys about it?

4 (All defendants spoke at once)

5 THE COURT: I think I heard, "It is sufficient." And
6 I heard, "I have talked to my attorney."

7 Is there anyone who wants me to read the whole thing
8 out loud?

9 DEFENDANT REYES: No, your Honor.

10 DEFENDANT SANCHEZ: No, your Honor.

11 DEFENDANT MORILLO: No, your Honor.

12 DEFENDANT PIMENTEL: No, your Honor.

13 DEFENDANT RODRIGUEZ: No, your Honor.

14 THE COURT: How do you now plead, Defendant Reyes?

15 DEFENDANT REYES: Not guilty.

16 THE COURT: Defendant Morillo.

17 DEFENDANT MORILLO: Not guilty.

18 THE COURT: Defendant Rodriguez?

19 DEFENDANT RODRIGUEZ: Not guilty.

20 THE COURT: Defendant Sanchez?

21 DEFENDANT SANCHEZ: Not guilty.

22 THE COURT: And Defendant Pimentel?

23 DEFENDANT PIMENTEL: Not guilty.

24 THE COURT: Won't you be seated, ladies and gentlemen?

25 Thank you.

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1 Ladies and gentlemen, in light of the superseder I
2 understand that you would like to adjourn the motion schedule
3 to have defense motions due March 2, opposition April 3,
4 replies April 10, and oral argument and/or a conference on
5 April 21 at 10:00 a.m.; is that correct, counsel?

6 MR. DeMARIA: Yes, your Honor.

7 MR. GONZALEZ: Yes, your Honor.

8 MR. GRECO: Yes, your Honor.

9 MR. DUKES: Yes, your Honor.

10 MR. De CASTRO: Yes, your Honor.

11 MS. BENETT: Yes, your Honor.

12 MR. STORCH: Yes, your Honor.

13 THE COURT: Any objection to that schedule?

14 MR. DeMARIA: No, your Honor.

15 MR. GONZALEZ: No, your Honor.

16 MR. GRECO: No, your Honor.

17 MR. DUKES: No, your Honor.

18 MR. De CASTRO: No, your Honor.

19 MS. BENETT: No, your Honor.

20 MR. STORCH: No, your Honor.

21 THE COURT: Very well then.

22 With respect to time?

23 MR. QUIGLEY: Your Honor, the government would move to
24 exclude time between now and April 21st to allow the parties to
25 contemplate the filing of any motions, to make those motions,

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1 and to allow them to review the discovery that has already been
2 produced.

3 THE COURT: Any objection to the exclusion of time
4 through April 21?

5 MR. DeMARIA: No, your Honor.

6 MR. GONZALEZ: No, your Honor.

7 MR. GRECO: No, your Honor.

8 MR. DUKES: No, your Honor.

9 MR. De CASTRO: No, your Honor.

10 MS. BENETT: No, your Honor.

11 MR. STORCH: No, your Honor.

12 THE COURT: Thank you, ladies and gentlemen.

13 Is there other business for all the defendants other
14 than Mr. Reyes? Any more business for anyone else?

15 MR. STORCH: No, your Honor.

16 MR. GRECO: No, your Honor.

17 THE COURT: All right. Everyone except for Mr. Reyes
18 and the counsel and the government are excused.

19 MS. BENETT: Thank you, your Honor.

20 MR. GRECO: Thank you, your Honor.

21 MR. De CASTRO: Thank you, your Honor.

22 MR. STORCH: Thank you, your Honor.

23 MR. GONZALEZ: Thank you, your Honor.

24 THE COURT: Thank you, counsel. Good morning.

25 Counsel, I have the government's letter dated December

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1 12 with the various attachments and I have Mr. Reyes' letter
2 dated December 15 with the attachments. Are there additional
3 written materials I should be looking at?

4 MR. QUIGLEY: Not from the government, your Honor.

5 MR. DeMARIA: No, your Honor.

6 THE COURT: Very well. Would you like to be heard on
7 this issue?

8 Mr. Quigley.

9 MR. QUIGLEY: Yes, your Honor. We don't have too much
10 to add beyond what is in our written submission. We think
11 there is very strong evidence that Mr. Reyes' organization
12 continued to operate even after he had been released on bail,
13 on house arrest. Just to respond, a few points made in the
14 defense submission this morning, or three points, actually:

15 Number one, our position didn't change -- or as a
16 result of Mr. Duke's arrest our position is and always has been
17 that Mr. Reyes should be detained. There was a reference to
18 the fact that with respect to this common call analysis these
19 could be relatives or friends. I just note that a large number
20 of the calls on the 3079 phone was the phone that Mr. Reyes had
21 that we were up on the wiretap on. A large number, a
22 significant percentage were pertinent and appeared to be drug
23 transactions. That was not a phone that was generally used for
24 any type of personal use and we have identified and I pointed
25 this out to --

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1 THE COURT: Defense counsel.

2 MR. QUIGLEY: Yes, defense counsel -- thank you, your
3 Honor -- beforehand, at least a number of customers, I had
4 given him the common call analysis and pointed out a number of
5 individuals who we know -- we don't know in some cases their
6 real names but we know from the interceptions that they were
7 customers of the organization who were both calling the 3079
8 phone and Mr. Dukes' phone.

9 THE COURT: May I interrupt you for a minute?

10 The defense letter says on page 3 in the second
11 paragraph, "It is telling that the government has not provided
12 the defense with a list of these 20 numbers, that is, the 20
13 numbers that were in contact with Mr. Reyes' 3079 phone and
14 Mr. Dukes' 9568 phone -- it continues -- which effectively
15 precludes the defense from providing the Court with a detailed
16 explanation."

17 Did I understand you to say, Mr. Quigley, that you
18 shared with defense counsel the numbers so that he was able to
19 see whose they were?

20 MR. QUIGLEY: Yes. I gave him the actual common call
21 analysis before today's proceeding, your Honor. Yes.

22 THE COURT: Thank you.

23 MR. QUIGLEY: And then just a final point and, again,
24 to respond to something in the defense submission. There was a
25 reference to flights that Mr. Reyes took to Florida during the

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1 time when he was supposedly selling drugs to the confidential
2 source and what happened in those transactions is that the
3 confidential source called Mr. Reyes, ordered up some drugs and
4 then somebody else, Mr. Morillo, actually provided Mr. Reyes
5 with the drugs and we think that actually supports our argument
6 or our belief that Mr. Reyes is capable of controlling or
7 operating his drug trafficking organization from a distance and
8 through other people, and it supports why detention as opposed
9 to continued home incarceration is appropriate here.

10 THE COURT: Just out of curiosity, I assume those
11 flights to Florida were approved by the pretrial services
12 officer?

13 MR. QUIGLEY: These flights to Florida were before
14 Mr. Reyes was arrested.

15 THE COURT: Mr. DeMaria?

16 MR. DeMARIA: Yes, your Honor. I will be a bit more
17 lengthy than the government was.

18 Mr. Reyes was arrested on July 9, 2014. He was bailed
19 on conditions. He has been in perfect compliance with those
20 conditions. The government noted in its letter that they were
21 seeking to re-open under 18 U.S.C. 3142. That is not the
22 proper procedure. The proper procedure is 3148 which is a
23 two-step inquiry; first, is there probable cause to believe
24 Mr. Reyes has committed any crime while on release, or has he
25 violated any other bail conditions? We submit: No. And the

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1 government has provided three reasons in its letter as to why
2 Mr. Reyes' bail should be revoked: First, the arrest of
3 Jeffrey Dukes; second, three kilos which were allegedly found
4 at Mr. Reyes' apartment.

5 THE COURT: Do we have any doubt they were found
6 there?

7 MR. DeMARIA: We deny that it was Mr. Reyes'
8 apartment, your Honor.

9 THE COURT: Do we know what apartment the drugs were
10 found in?

11 MR. DeMARIA: Pardon me, your Honor?

12 THE COURT: Is there any doubt which apartment the
13 drugs were found in?

14 MR. DeMARIA: I do not believe so. No.

15 THE COURT: And what is your position on whether it is
16 or isn't Mr. Reyes' apartment?

17 MR. DeMARIA: My position is that it is not his --

18 THE COURT: Remind me the address please, sir?

19 MR. DeMARIA: It was on Crotona --

20 MR. QUIGLEY: 1497 Crotona Place, your Honor.

21 THE COURT: Thank you.

22 And your position is what? That he was still living
23 with his mother at that time? Where do you say he was living?

24 (Defendant and counsel conferring)

25 MR. DeMARIA: He resided in Florida and was going back

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1 and forth between Florida and his mother's apartment where he
2 is presently staying at 1561 Rhineland Avenue.

3 THE COURT: What is the government's position on how
4 this was Mr. Reyes' apartment, please?

5 MR. QUIGLEY: Your Honor, well, first he was in the
6 apartment when they went in to execute the arrest warrant. He
7 had been observed there numerous times on surveillance. I
8 think there were pieces of mail that were produced in discovery
9 that were addressed to him there. Ms. Rodriguez, who is not
10 only his co-defendant but his fiancée, was also there along
11 with some of the other defendants. I believe that there were
12 some clothes -- children's clothes and things of that nature
13 that we provided to -- after the operation that were provided
14 to the family because they couldn't use the apartment anymore.

15 THE COURT: Mr. DeMaria, is your statement that it
16 wasn't defendant's apartment sufficient to raise an issue here?

17 MR. DeMARIA: It is, your Honor, for two reasons.

18 First of all, I think we got a bit side-tracked by my
19 making that point but the primary issue is that this was an
20 issue which the government raised with Judge Peck more than
21 five months ago. They wrote a letter asking that the initial
22 bail decision be stayed and one of the reasons was because of
23 the three kilos. So, this is clearly not an appeal, that's why
24 we are under 3148 and not 3142. This is not an appeal of the
25 initial order.

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1 THE COURT: Right.

2 MR. DeMARIA: So, I don't think it makes a difference.

3 I do just want to say that there are no pictures or
4 any other evidence of Mr. Reyes entering the apartment that we
5 have received in discovery.

6 The third reason why the government purports to want
7 to have Mr. Reyes' bail revoked is because there was some
8 uncertainty at the time of his presentment and, as I noted a
9 moment ago, both those points were written in a stayed letter
10 five nights ago, and third time barred. Now they simply should
11 not be raised at this point.

12 If you look back, the government did make those two
13 points. An issue for this hearing suggests that the Dukes'
14 arrest is not strong enough and the bail revocation and that
15 the evidence is insufficient. Neither these superseding
16 indictments nor anything else bring new charges against
17 Mr. Reyes. There is simply no proof or any evidence that he
18 has committed a crime. The indictment does not add any further
19 allegations against him. And while the common call analysis
20 which I received right before your Honor came does show some of
21 the same numbers were called, as I noted in my letter they're
22 brothers, they could be family members and friends and that is
23 exactly what we say they are.

24 THE COURT: What do you say to the government's
25 representation that the business conducted on the 3079 phone

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1 was not personal but was drug-related?

2 MR. DeMARIA: First of all, I deny that Mr. Reyes was
3 ever using the 3079 phone to conduct any elicited activities on
4 the wiretap which we have searched. There is a number of
5 voices.

6 THE COURT: Generally, there are two voices on a phone
7 call, counsel. They can't all be Mr. Reyes.

8 MR. DeMARIA: What I meant, your Honor, is there is
9 different people who answer the 3079 phone, most of the calls
10 we got were incoming calls with some outgoing ones and there is
11 markedly different voices for whoever is purported to be using
12 the 3079 number. That is what I meant when I said they can't
13 I.D. Mr. Reyes.

14 THE COURT: I understood, and I guess Mr. Quigley can
15 correct me if I am wrong, but I understood the government to be
16 representing that there were phone calls on the 3079 phone
17 where Mr. Reyes was conducting drug business and, in addition,
18 that there were few, if any, personal calls, calls of a
19 personal nature, on that phone.

20 Do you deny that?

21 MR. DeMARIA: Your Honor, there were a lot of calls
22 which were suspicious in nature on the 3079 phone. The issue
23 is it was not under Mr. Reyes' name and that there were other
24 people using it and we say he was not using it at all.

25 THE COURT: He wasn't using it at all is your

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1 position?

2 MR. DeMARIA: Not for any drug business at least.

3 THE COURT: Mr. Quigley?

4 MR. QUIGLEY: Your Honor, just a couple of things.

5 On the issue of the address, I was just actually
6 looking back at our search warrant application for that address
7 and Mr. Reyes listed 1497 Crotona Place as his address in
8 connection with an airplane trip to Florida and he also used it
9 in connection with the purchase of a car which he bought I
10 think a few days before we executed the arrest operation.

11 So, that's -- look. I think --

12 THE COURT: Is that stale information, though, that
13 that address was used for the purposes you mentioned? Was that
14 address information known at the time you were before Judge
15 Peck?

16 MR. QUIGLEY: Yes, your Honor; that was. Yes.

17 THE COURT: So, counsel says that that is not
18 sufficient to bring up now because this is not an appeal from
19 Judge Peck's original order.

20 MR. QUIGLEY: Right, moving on the basis of the
21 changed circumstance, 3142, which is an appropriate vehicle for
22 moving.

23 In our letter the main changed circumstance is the
24 evidence that this organization was continuing to operate
25 despite Mr. Reyes' arrest and the other changed circumstances

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1 are the seizure of three kilograms of heroin from that
2 apartment. That search was --

3 THE COURT: Excuse me. I'm sorry I'm interrupting
4 you, but I guess you were going to tell me when that search was
5 executed.

6 MR. QUIGLEY: That was ongoing. That was ongoing as
7 we were before Judge Peck at the time, it had not yet been
8 completed yet.

9 THE COURT: I don't think I saw in the transcript
10 before Judge Peck the three kilos.

11 MR. QUIGLEY: It was not because we didn't know it had
12 been seized yet.

13 What happened is the agents on the morning of July 9th
14 the agents went in because they knew -- they believed Mr. Reyes
15 was living at that address. They executed arrest warrant, they
16 found a number of defendants there. They brought them down.
17 When they went in they saw drug paraphernalia in plain view.
18 Some of the them stayed there, they froze the apartment. We
19 got a search warrant, then the agents went back up to the Bronx
20 to execute the search warrant while the defendants were being
21 presented. So, the search warrant was not complete, the
22 execution was not complete at the time Mr. Reyes was presented.

23 THE COURT: So, Judge Peck didn't know about the three
24 kilos?

25 MR. QUIGLEY: Correct. Yes, your Honor. Yes.

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1 And the third changed circumstance here, the issue
2 that has been clarified is that Mr. Reyes was in fact convicted
3 in the Bronx of three different offenses and that was not
4 reflected in the transcript, not entirely clear from his rap
5 sheet at the time of his presentment.

6 THE COURT: Mr. DeMaria, do you have any further
7 comment on the use of the telephone, the 3079 telephone, since
8 Judge Peck's bail determination?

9 MR. DeMARIA: That phone was seized by the agents and
10 was not used by Mr. Reyes following his arrest.

11 THE COURT: Mr. Quigley, may I ask you what is the
12 basis of the government's suggestion that Mr. Reyes was
13 directing the drug organization since his arrest, please?

14 MR. QUIGLEY: Your Honor, the commonality of -- well,
15 number one, that we know that Mr. Dukes was in fact selling
16 heroin to Mr. Cruz who we believe was a customer of the drug
17 trafficking organization; that the NYPD observed them on
18 November 14th and that Mr. Cruz was using a phone that is the
19 9568 phone which has a high, as we say in our letter,
20 correlation of calls between -- there were a higher correlation
21 of calls between that phone and a phone Mr. Reyes was using,
22 was seized from either his person or that apartment on July
23 9th, the 3079 phone, and not just innocent calls but calls that
24 the government knows through the wiretap were people who were
25 buying drugs from this organization.

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1 It is also not, as we say in our letter, Mr. Dukes and
2 Mr. Reyes are not strangers. In fact, Mr. Dukes was living at
3 the time in the residence where Mr. Reyes was in house-arrest.
4 So, it seems extremely unlikely, frankly, that all these
5 customers would have gravitated towards calling Mr. Dukes
6 without some involvement from Mr. Reyes after his arrest.

7 THE COURT: Thank you.

8 Mr. DeMaria?

9 MR. DeMARIA: Your Honor, first of all, Mr. Dukes was
10 staying at his girlfriend's house most of the time. That is
11 why, for example, in my letter to the Court asking that
12 Mr. Reyes be allowed to move to a different apartment, I don't
13 make any mention of him, simply make mention of the mother, the
14 stepfather and the children. I have no knowledge of him living
15 there until the government said so in his letter. Mr. Reyes
16 told me that he was very infrequently, he was mainly at his
17 girlfriend's house and so that is my first point.

18 Secondly, again, with respect to the commonality of
19 the phone numbers, they are brothers. It makes sense they
20 would call the same people, they would have the same friends.
21 Perhaps some of those friends, if you believe the government's
22 allegations, are drug addicts and what not which could explain
23 all of this. But I mean there is actually nothing to suggest
24 that Mr. Reyes has been involved after his arrest. There is no
25 credible evidence that we have seen.

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1 THE COURT: Anything else?

2 MR. QUIGLEY: Yes, your Honor.

3 Mr. Dukes provided 1516 Rhinelander as his address
4 when he was arrested by NYPD on November 14th. It is reflected
5 on the arrest report. So, that's where he thought he was
6 living anyway.

7 THE COURT: Anything else, Mr. DeMaria?

8 MR. DeMARIA: One last point, your Honor.

9 I note, and as to the last two exhibits in my letter,
10 Mr. Reyes was in Florida when two of these alleged drug sales
11 occurred and he vehemently denies any allegations. Christmas
12 is right around the corner, his children should not be deprived
13 of their father given the tenuous evidence put forward here
14 today.

15 THE COURT: What do you say to the government's
16 representation that Mr. Reyes was on the phone with the
17 purported buyers and that the actual handoff of the narcotics
18 was done by other folks? The fact that Mr. Reyes was in
19 Florida seems to be irrelevant.

20 MR. DeMARIA: Again, your Honor, I have listened to
21 every single phone call on the wiretap and there are completely
22 different voices for the user of the 3079 phone and they can't
23 all be Mr. Reyes, and we are saying none of them are Mr. Reyes
24 and, of course, that is an issue for trial.

25 THE COURT: Anything else?

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1 MR. QUIGLEY: No, your Honor. Thank you.

2 THE COURT: Thank you.

3 Certainly the three kilos is a changed circumstance
4 and the confirmation of Mr. Reyes' prior drug convictions is a
5 changed circumstance. On those facts alone Mr. Reyes has not
6 carried his burden in a presumption case. Added to that is the
7 arrest of Mr. Dukes.

8 As counsel has pointed out, there is a high
9 correlation between Mr. Cruz' 9568 phone and Mr. Reyes' 3079
10 phone. And, the government represents that those were calls
11 relating to narcotics activity.

12 Mr. Dukes and Mr. Reyes lived in the same residence
13 from time to time and I agree with the government that it is
14 unlikely that the customers of Mr. Reyes would have gravitated
15 to Mr. Dukes without some input by Mr. Reyes. Also, as the
16 government points out, Mr. Dukes and Mr. Reyes are half
17 brothers, they're hardly strangers.

18 Taking all of these factors into account, I find that
19 the defendant Reyes has not carried his burden in this
20 presumption case and that there are no circumstances which will
21 maintain the safety of the public. Accordingly, Mr. Reyes is
22 ordered detained.

23 UNIDENTIFIED SPEAKER: Oh my God, your Honor. Please,
24 don't. Don't. Please.

25 THE COURT: Thank you, ma'am.

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1 UNIDENTIFIED SPEAKER: Please, your Honor. Don't do
2 it. The horrible things I hear. Holidays.

3 THE COURT: Yes, ma'am. I'm sorry to have to.

4 UNIDENTIFIED SPEAKER: His babies, he has six kids.
5 Your Honor, please, don't do this.

6 THE COURT: Yes, ma'am.

7 UNIDENTIFIED SPEAKER: Please, your Honor. Don't do
8 it. Please, he has six kids. Please. Oh!

9 MR. DeMARIA: Your Honor?

10 THE COURT: Mr. DeMaria.

11 MR. DeMARIA: May I ask that the Court decision be
12 stayed while we contemplate a potential appeal?

13 THE COURT: No, sir. I mean you may ask, but it is
14 denied.

15 MR. DeMARIA: Thank you.

16 THE COURT: Yes, sir.

17 UNIDENTIFIED SPEAKER: Please.

18 THE COURT: Thank you, Mr. Marshal.

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